IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4003 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT DYESTUFFS MANUFACTURERASSOCIATION & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MIHIR JOSHI, SR.ADVOCATE with MS AMRITA M THAKORE for Petitioners
MR UDAY R BHATT, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr. Mihir Joshi, learned Sr. Advocate with Ms.Amrita

Thakore, learned counsel for the petitioners and Mr. Uday R. Bhatt, learned AGP for the respondents. Parties are heard.

2. By this petition under Article 226 of the Constitution of India, the petitioners seek to challenge Circular No. GUJCA/10-C/560/2003-04/Outward No.1216/731, dated 15.9.2003 issued by the Sales Tax Commissioner, State of Gujarat, Ahmedabad and yet another Circular No. VVC/ANVE/FORM-45[A]/2003-04/Outward 1132, dated 23.10.2003.

3. Mr. Joshi, learned Sr. Advocate, after making his detailed submissions in relation to the Circular dated 15.9.2003 (Annexure:C), submitted that he be allowed to withdraw the challenge with liberty to the petitioner to raise this question that there is sharp conflict between the amended sub-section [5] of Section 8 and sub-section [2] of Section 8 and the conflict can be removed only if these two sections are harmoniously considered. He submitted that he would raise this question with all other available contentions before the concerned Taxing Officer and would try to satisfy them and in case, he is required to challenge the said order before an appropriate Forum. He is allowed to do so with liberty to the petitioners to withdraw that

part of the petition.

4. In relation to the Circular dated 23.10.2003 (Annexure:D), it is submitted that non-submission of the Form No.45[A] at the time of the assessment cannot lead to the only presumption that the goods did not cross borders of the State and were sold in the State only. According to him, there may be variety of the reasons which may lead to non-production of the said declaration form/Form No.45[A] and if a presumption can be raised against the assessee, then, the assessee must get an opportunity to rebut the said presumption. He has referred to the judgment of the Supreme Court in the matter of ***Sodhi Transport Co. and others Vs. State of U.P. and others, reported in (1986) 2 Supreme Court Cases 486.***

5. Mr. Uday R. Bhatt, learned AGP for the State, contending contrary to the said submissions, however, submitted that to put a check on the tax evasion and to curb the activities of the people who are selling the goods in the State, but are trying to take advantage of the inter-state sales, the State Government/concerned department had to issue such circular. He submits that it shall always be the duty of the concerned assessee to produce all concerned

forms/declaration forms before the authority and in case he does fail, then, the Assessing Officer/department would always be justified in raising presumption.

6. In the matter of Sodhi Transport [supra], the matter was relating to the U.P. Sales Tax Act, 1948, specially Sections 28 and 28-B, so also U.P.Sales Tax Rules, 1948, specially Rule 87. In almost similar situation, the Supreme Court observed that the words “it shall be presumed” in Section 28-B only require the authorities concerned to raise a rebuttal presumption, that the goods must have been sold in the State if the transit pass is not handed over to the officer at the check-post or the barrier near the place of exit from the State. The Supreme Court has further observed that the presumption would be rebuttal presumption, which has the effect of shifting the burden of proof. The authority concerned before levying sales tax arrives at the conclusion by judicial process that the goods have been sold inside the State and in doing so, relies upon statutory rule of presumption contained in Section 28-B of the Act. The Supreme Court, however, was of the view that as presumption is not in itself the evidence, but only makes prima facie

case for the party in whose favour it exists. It a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is rebuttable, it only points out the party on whom lies the duty going forward with evidence on the fact presumed, and when the party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of presumption is over. The Circular dated 23.10.2003 is to be read in accordance with the observations made by the Supreme Court. The authority would be entitled to raise presumption, but the presumption would be rebuttable and such authority, on a request made by the assessee, will have to give an opportunity to the concerned assessee to lead evidence to rebut the presumption. In our considered opinion, the Circular dated 23.10.2003 is not to be read beyond what we have said.

7. The petition is accordingly disposed of. Rule is discharged. Interim relief, if any, stands vacated. No costs.

(***R. S. Garg, J.***)

(***Ravi R. Tripathi, J.***)

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